

Message Text

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RSC-01 CIAE-00 DODE-00 PM-07 H-02 INR-10 NSAE-00

NSC-10 PA-03 PRS-01 SS-15 USIA-12 CPR-02 RSR-01 SY-10

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FM USMISSION USUN NY

TO SECSTATE WASHDC 8506

INFO AMEMBQSSY BRUSSELS

AMEMBASSY LONDON

USMISSION GENEVA

AMEMBASSY PARIS

AMEMBASSY STOCKHOLM

C O N F I D E N T I A L SECTION 1 OF 2 USUN 2308

GENEVA FOR AMB KEARNEY

E. O. 11652: GDS

TAGS: PFOR, UN

SUBJ: CONVENTION ON THE PROTECTION OF DIPLOMATS

REFS: STATE 111065, 111066, 111067

1. SUMMARY. WEO GROUP MET 19 JUNE TO DISCUSS PROPOSED COMMENTS THAT ARE TO BE SUBMITTED TO SYG BY 1 JULY ON DRAFT INT'L LAW COMMISSION ARTICLES ON PROTECTION OF DIPLOMATS. ALL EXCEPT FRANCE AND SWEDEN AGREED THAT UNGA 6 TH COMMITTEE SHOULD TRY TO NEGOTIATE AND CONCLUDE A CONVENTION BASED ON THE DRAFT ARTICLES AS A MATTER OF HIGH PRIORITY, AND THAT THIS EFFORT SHOULD BE KEPT SEPARATE FROM THE TERRORISM COMMITTEE REPORT ITEM. THERE WAS LITTLE SUPPORT FOR WHAT WAS REGARDED AS THE EXTREME BREVITY OF THE DRAFT US COMMENTS, MOST AGREEING WITH A UK/ AUSTRALIAN CONTENTION THAT " BALANCE" IN CONFIDENTIAL

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LENGTH AND DETAIL IS NEEDED. WEO' S WILL MEET AGAIN 10 JULY FOR AN EXCHANGE OF VIEWS ON EACH OF THE ILC ARTICLES. 2. DETAILS. MTG CHAIRED BY BELGIAN DEPERMREP VAN USSEL AND, SUBSEQUENTLY, BY BELGIAN MISSION ADVISER VAN

BRUSSELEN 19 JUNE WAS ATTENDED BY AUSTRIA, AUSTRALIA, CANADA, BELGIUM, DENMARK, FRANCE, FRG, IRELAND, LUXEMBOURG, NETHERLANDS, SWEDEN, UK AND US. VAN USSEL REPORTED USSR MISSION HAS TOLD HIM THAT SOVIET POSITION ON CONVENTION ON PROTECTION OF DIPLOMATS IS NOT DISSIMILAR TO GENRAL WEO POSITION (FRANCE EXCEPTEC, OF COURSE); THEY HAVE NO OVERALL OBJECTION TO THE ILC ARTICLES AND BELIEVE THE 28 TH GA SHOULD NEGOTIATE AND TRY TO CONCLUDE A SATISFACTORY CPD. SOVIETS HAD EXPRESSED VIEW THAT 6 TH COMMITTEE' S SCHEDULE WOULD BETTER ACCOMMODATE TIME REQUIRED FOR CPD NEGOTIATIONS IF ICJ REVIEW ITEM (WHICH THEY DISLIKE) COULD BE POSTPONED TO 29 TH GA. VAN USSEL COMMENTED THAT SOVIETS HAD NOT PROPOSED A PACKAGE DEAL BUT HAD MADE THIS COMMENT IN PASSING; HE ALSO NOTED THAT LAST YEAR WEO GROUP HAD BEEN WILLING TO POSTPONE THE COURT REVIEW ITEM FOR A YEAR. VAN USSEL FURTHER REPORTED THAT IN TALK WITH YUGOSLAV MISSION, YUGOS HAD EXPRESSED WILLINGNESS TO TRY TO CONCLUDE CPD AT 28 TH SESSION.

3. IN RESPONSE TO VAN USSEL' S REQUEST FOR DISCUSSION OF DRAFT COMMENTS TO SYG, US HANDED OUT TEXT PER STATE 111067 AND EXPLAINED REASONS WHY WE THINK BRIEF AND UPBEAT COMMENTS WILL BEST HELP AVOID POSSIBLE DILATORY TACTICS IN 6 TH COMMITTEE TO REFER ARTICLES BACK TO ILC FOR FURTHER WORK; SOLICITED COMMENTS. GENERALITY OF INFERENCES AND COMMENTS WAS THAT US DRAFT IS TOO EXTREME IN ITS BREVITY, THAT ITS FAILURE TO NOTE EVEN ONE OR TWO AREAS WHERE DRAFTING IMPROVEMENTS MIGHT BE MADE DEPRIVES IT OF CREDIBILITY, AND THAT THIS SAME OMISSION COULD LIKELY WEAKEN JOINT WEO EFFORTS IN THE 6 TH COMMITTEE TO IMPROVE THE ARTICLES. MISOFF EXPLAINED AT CONSIDERABLE LENGTH REASONS UNDERLYING OUR THINKING BUT TENDENCY OF GROUP WAS CLEARLY TO ACCEPT AUSTRALIAN ARGUMENT THAT, WHILE DANGERS OF UNDULY DETAILED TEXTUAL CRITICISMS SHOULD BE RECOGNIZED, SO, TOO, US APPROACH PRESENTED DANGER THAT FAILURE TO " PUT CONFIDENTIAL

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OTHERS ON NOTICE " OF AREAS WHERE IMPROVEMENTS WILL BE SOUGHT COULD RESULT IN SITUATION WHERE 6 TH COMMITTEE BEGINS NEGOTIATION OF CPD BUT THEN, UPON BEING CONFRONTED WITH NUMBER OF AMENDMENTS, LAYS ITSELF OPEN TO ANTI- CPD ARGUMENT THAT THESE MATTERS REQUIRE CONSIDERATION BY CAPITALS AND THAT A CONTINUATION AT THE 29 TH SESSION WILL CONSEQUENTLY BE NECESSARY.

4. COUNTRY VIEWS FOLLOW. DENMARK CIRCULATED DRAFT COPENHAGEN COMMENTS (POUCHED NELSON, L/ UNA) WHICH PARALLEL US COMMENTS BUT AT END ADDS, BRIEFLY, THAT DEFINITION OF ACTS (ART 2) NEEDS GREATER PRECISION, THAT EXTRADITION REQUESTS PROVISION (ART 7) SHOULD BE

BROUGHT IN LINE WITH COUNCIL OF EUROPE TREATIES, AND THAT STATUTE OF LIMITATIONS CLAUSE (ART 9) NEEDS DRAFTING IMPROVEMENT. DANISH PARTICIPANT SAID HE AGREES WITH US STATEMENT IN FAVOR OF SHORT COMMENT BUT CONSIDERED DANISH DRAFT NOT UNDULY DETAILED.

5. SWEDEN HAS EXTREMELY DETAILED JUSTICE MINISTRY COMMENTS ON EVERY ONE OF THE ARTICLES. SWEDISH PARTICIPANT NOTED THAT LAST YEAR IN 6 TH COMMITTEE SWEDEN HAD SAID DRAFT ARTS COULD BE SENT BACK TO ILC AND STOCKHOLM WAS SOMEWHAT STUCK WITH THIS EARLIER SHOW OF FLEXIBILITY. (COMMENT: APART FROM FRANCE, ONLY SWEDEN NOTED THIS POSSIBILITY; OTHERS CLEARLY OPPOSED.) SWEDISH PARTICIPANT SAID GREATER PART OF JUSTICE MINISTRY COMMENTS CONCERNED ASSERTED INADEQUACIES OF ART 1(B) PHRASE CONCERNING PERSONS ENTITLED TO PROTECTION " PURSUANT TO GENERAL INTERNATIONAL LAW OR AN INTERNATIONAL AGREEMENT", WHICH NOT SUFFICIENTLY PRECISE; AND OBJECTION TO ART 2(1) (D)' S INCLUSION OF " AN ATTEMPT TO COMMIT ANY SUCH ATTACK" AS A COVERED ACT AS EXTREMELY DIFFICULT FROM VIEWPOINT SWEDISH INTERNAL LAW. FINALLY, ART 7(3) PROVISION TO EFFECT THAT SPECIFIED CRIMES SHALL BE EXTRADITABLE WHERE NO EXTRADITION TREATY AND NONE NECESSARY SHOULD BE REVISED TO CONFORM TO HAGUE AND MONTREAL CONVENTION CLAUSES. BELGIAN, DANISH AND AUSTRIAN PARTICIPANTS INDICATED GENERAL AGREEMENT WITH SWEDISH VIEWS THAT ART 1(B) NOT SUFFICIENTLY PRECISE.

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6. UK UN LEGAL ADVISER FREELAND SAID HMG WANTS A CPD THIS YEAR BUT IT MUST BE ONE (A) THAT UK CAN RATIFY AND (B) WHICH WILL COMMAND WIDEST POSSIBLE ACCEPTANCE. UK POSITION IS ONE OF GENERAL SUPPORT FOR ILC ARTS BUT LONDON CONSIDERS THE TEXT WILL BE IMPROVED IN BOTH (A) AND (B) RESPECTS BY BRINGING IT INTO CLOSER APPROXIMATION TO HAGUE CONVENTION MODEL. UK CONCERNED THAT TOTAL SILENCE IN COMMENTS TO SYG ON THOSE AREAS THAT ARE TROUBLESOME WOULD MEAN 6 TH COMMITTEE NEGOTIATORS WOULD NOT BE PREPARED. FOLLOWING US STATEMENT IN OPPOSITION TO DETAILED CHARACTER OF PROPOSED UK COMMENTS PER STATE 111066, FREELAND RATHER SHARPLY OBSERVED THAT BRITISH 5- PAGE DRAFT IS IN FACT " SELECTIVE"; HE NOTED HE HAD RECEIVED FROM LONDON SOME FORTY PARAGRAPHS OF DRAFTING OBSERVATIONS.

7. FRG SAID GERMAN MISSION HERE CONSIDERS BONN' S DRAFT TOO LONG AND WILL BE TRYING TO MAKE IT MORE " SELECTIVE". GERMANS HAVE SPECIAL PROBLEMS WITH PERSONS PROTECTED AND EXTRADITION.

8. FRANCH ADVISER SAID NO COMMENTARY HAS BEEN RECEIVED

FROM PARIS BUT REMINDED THAT FRANCE HAS NOT AGREED WITH
WEO ON RIPENESS OF ILC ARTS FOR CODIFICATION. FRANCE

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C O N F I D E N T I A L SECTION 2 OF 2 USUN 2308

HAS NUMBER OF OBJECTIONS OF PRINCIPLE AND CONSIDERS
FROM JURIDICAL VIEWPOINT THAT NEGOTIATIONS ON THE
BASIS OF SUCH VAGUELY WORDED PROVISIONS WOULD BE
INAPPROPRIATE. SPECIFIC DIFFICULTIES WITH PERSONS
PROTECTED, ACTS COVERED AND EXTRADITION. FRENCH
MISSION NOT CERTAIN WHETHER PARIS' S " RESERVATIONS OF
PRINCIPLE" WILL PERSIST.

9. LUXEMBOURG WANTS CPD CONCLUDED AT 28 TH SESSION.
WILL SUBMIT A GENERAL COMMENT TO THE SYG TO THIS EFFECT.

10. CANADIAN ADVISER WANG SAID CANADIAN MISSION NOT
YET IN RECEIPT OF DRAFT CANADIAN COMMENTS BUT HAS OUT-
LINE. STATEMENT WILL BE CONCISE AND GENERAL; NO
TEXTUAL COMMENTS; WILL RAISE NO CONTROVERSIAL ISSUES
(CITING SAFE CONDUCT, ASYLUM); WILL URGE 28 TH GA
ACTION; WILL STATE THAT CPD IS NEEDED NOT SO MUCH FOR
PROTECTION OF INDIVIDUALS CONCERNED AS FOR PROTECTION
OF CONDUCT OF INTER- STATE RELATIONS. WANG SAID UNDER-
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LYING GOC VIEWPOINT IS TO BRING CPD INTO LINE WITH

HAGUE / MONTREAL.

11. NETHERLANDS MISSION HAS RECEIVED THICK FILE OF DUTCH COMMENTS AND WILL SEEK TO URGE ON GON THAT COMMENTS TO BE SUBMITTED TO SYG OCCUPY A " MIDDLE COURSE" BETWEEN EXTREME US BREVITY AND POSSIBLE "FULL" COMMENTS . (A) LIKE SWEDEN, THE HAGUE IS OPPOSED TO THE ART 1 " PURSUANT TO GENERAL INTERNATIONAL LAW OR AN INTERNATIONAL AGREEMENT" AS TOO VAGUE; IN ACTUAL EMERGENCY SITUATION POLICE OFFICIALS WOULD HAVE TO CONSULT A VARIETY OF TREATIES TO DETERMINE WHETHER A PERSON WAS OR WAS NOT PROTECTED; PERSONS PROTECTED SHOULD BE LISTED. (B) EXTRADITION PROVISION SHOULD STATE AN ORDER OF PREFERENCES ; ALTHOUGH GON VIEWS NOT RIGID, A SENSIBLE ORDER WOULD BE TO GIVE FIRST EXTRA-DITION PREFERENCE TO STATE IN WHICH CRIME COMMITTED, STATE OF NATIONALITY OF APPARENT CRIMINAL, STATE TO WHICH DIPLOMAT ACCREDITED, AND THEN STATE OF NATIONALITY OF DIPLOMAT. (C) THERE SHOULD BE AN ESCAPE CLAUSE THAT WOULD ENABLE A GOVERNMENT TO DISREGARD ITS OBLIGATIONS IF NECESSARY TO SAVE LIVES, EG BY GIVING IN TO DEMANDS OF THOSE THREATENING LIFE OF PROTECTED PERSON. HAGUE CONVENTION ESCAPE CLAUSE WOULD BE ACCEPTABLE.

12. IRELAND SAID ARTS STILL UNDER STUDY IN DUBLIN. IN GENERAL THEY THINK CPD A GOOD BASIS FOR NEGOTIATIONS. NO OBJECTION TO HIGH PRIORITY ON 6 TH COMMITTEE AGENDA, ALTHOUGH THEIR FIRST PREFERENCE HAS BEEN FOR A DIPLOMATIC CONFERENCE SEPARATE FROM GA.

13. AUSTRALIA SAID CANBERRA HAS NOT YET FORWARDED DRAFT COMMENTS. GOA CONTINUES TO WANT HIGH PRIORITY FOR CPD.

14. BELGIUM HAS MANY OF SAME PREOCCUPATIONS AS TO DETAILS OF DRAFT ARTS AS SWEDEN, VAN BRUSSELEN SAID; IT WOULD BE NECESSARY TO ADD PRECISION WITH REGARD TO ACTS AND PERSONS COVERED. BELGIAN MISSION HAD CONVINCED BRUSSELS TO SUPPRESS DETAILS OF THIS NEED FOR GREATER PRECISION IN ITS COMMENTS TO SYG, WHICH WILL MERELY NOTE IN SUMMARY WAY THAT NEED EXISTS, AND WILL STATE CONFIDENTIAL

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THAT 28 TH GA ACTION IS URGENT.

15. IN REPLY TO NETHERLANDS COMMENT, WANG SAID THAT CANADA CONSIDERS EXISTING DRAFT ARTS PROVIDE ENOUGH ROOM FOR MANEUVER AND THAT AN ADDITIONAL ESCAPE CLAUSE IS UNNECESSARY; ARTS 5&6 (PROSECUTION AND EXTRADITION) IN PARTICULAR PROVIDE FLEXIBILITY AND WOULD AUTHORIZE A GOVERNMENT TO ACT AS THE GOC DID IN THE CROSS CASE WHEN IT AGREED TO SEND THE OFFENDERS TO CUBA IN EXCHANGE FOR RELEASE OF BRITISH TRADE COMMISSIONER. OTTAWA

THINKS RETURN TO HAGUE CONVENTION FORMULA " UPON BEING SATISFIED THAT THE CIRCUMSTANCES SO WARRANT" SHOULD BE AT ONCE ESCAPE CLAUSE AND TRIGGER MECHANISM FOR OBLIGATION OF TERRITORIAL PARTY TO TAKE OFFENDER INTO CUSTODY SO AS TO ENSURE PRESENCE FOR PROSECUTION OR EXTRADITION.

16. MISOFF MADE STATEMENT AGAINST NEED FOR WAIVER PROVISION AND ESPECIALLY URGED NETHS NOT TO PROPOSE WAIVER IN COMMENTS TO SYG; OBSERVED THAT PROBLEM WILL NOT BE ONE OF " SURPRISE" IN 6 TH COMMITTEE WHEN WAIVER ISSUE IS RAISED BUT NEED TO KEEP WAIVER PROVISIONS FROM DESTROYING CPD.

17. AUSTRALIAN PARTICIPANT THEN MADE POINT NOTED PARA 3 ASSERTING NEED FOR " BALANCE" BETWEEN SUBMISSION OF EXTREMELY DETAILED TEXTUAL SUGGESTIONS ON ONE HAND AND US BREVITY ON OTHER. VAN BRUSSELEN SOUGHT TO SUMMARIZE BY SAYING THAT ALMOST ALL IN GROUP CONSIDERED THAT ILC ARTS ON ACTS INCLUDED AND PERSONS COVERED REQUIRE REFINEMENT BUT THAT IT IS NOT DESIRABLE THAT COMMENTS SHOULD GO INTO MUCH DETAIL.

18. UK PROPOSED THAT WEO GROUP SHOULD MEET AGAIN TO DISCUSS PREPARATION OF TEXTUAL AMENDMENTS AND TACTICS FOR HANDLING THEM. AUSTRIA, CANADA AND US SUPPORTED. CANADA PROPOSED THIS BE DONE IN SEPT BUT MISOFF SAID AN ART- BY- ART DISCUSSION EARLY IN JULY WOULD BE USEFUL EVEN IF TRANSLATED COMMENTS SUBMITTED BY OTHER COUNTRIES NOT YET IN PRINT. IT WAS AGREED THAT THIS FURTHER MEETING FOR AN EXCHANGE OF VIEWS ON AN ART- BY- ART CONFIDENTIAL

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BASIS WILL BE HELD 10 AM ON 10 JULY AT BELGIAN MISSION.
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